

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA	*
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V	*
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BRIAN FOLKS	* CRIMINAL FILE NO. 16-94

DETENTION HEARING
Thursday, July 28, 2016
Burlington, Vermont

BEFORE:

THE HONORABLE JOHN M. CONROY
Magistrate Judge

APPEARANCES:

HEATHER E. ROSS, ESQ., Assistant United States
Attorney, Federal Building, Burlington, Vermont;
Attorney for the United States

MICHAEL J. STRAUB, ESQ., Law Office of Michael J.
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Vermont; Attorney for Defendant Folks

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1 THURSDAY, JULY 28, 2016

2 (The following was held in open court at 2:05 p.m.)

3 COURTROOM DEPUTY: Your Honor, the matter
4 before the Court this afternoon is criminal action
5 16-CR-94-1, United States of America versus Brian Folks,
6 who is present in the courtroom today with attorney
7 Michael Straub. Representing the government this
8 afternoon is Assistant United States Attorney Heather
9 Ross. And we are here for a continuation of the hearing
10 on detention.

11 THE COURT: Miss Ross, I'll hear you.

12 MS. ROSS: Thank you, your Honor.

13 The government would like to start with the bail
14 report because even though there are factors that this
15 bail report does not address -- and as I understand from
16 conversations with the probation office, there are
17 factors or areas that the bail report cannot address --
18 there's still enough to hold Mr. Folks if we just look
19 at the bail report alone. So I'll start there.

20 Obviously we have the very serious nature of the
21 charges. It's an ongoing drug-trafficking conspiracy,
22 and it involves mandatory minimum quantities of drugs in
23 this multiple-count indictment.

24 There is also the significant criminal history of
25 this defendant which shows that he has been interacting

1 with law enforcement since at least -- at least the age
2 of 17. In 1993, he was convicted of manslaughter for
3 killing a man by shooting him in the chest. He stays in
4 jail for 13 years. He is released on parole from New
5 York in 2006, February of 2006, and five months later he
6 incurs his first arrest in Vermont while he is clearly
7 still on parole in New York.

8 With respect to that arrest, which was for the
9 marijuana possession charge, he also incurs a failure to
10 appear, and that's on September 26th of 2006. He goes
11 back to jail for an additional two years, starting in
12 2007, and is released again in 2009.

13 Gonna hold for a moment on talking about the time
14 period between 2009 and 2012.

15 For his next arrest in -- January 25th, 2012, he --
16 what's indicated in the bail report is a fugitive from
17 justice with no further information. The government has
18 obtained further information --

19 MR. STRAUB: Your Honor, I would like to pose
20 an objection to what I'm starting to notice in the
21 government's argument, referring to an awful lot of
22 information that's not in evidence, that's not in the
23 bail report, and apparently we are about to hear some
24 more information that's not in evidence and not in the
25 bail report. So I'd like -- I hope this is a good

1 moment to raise that objection. I can certainly, you
2 know, point that out during my argument.

3 THE COURT: Okay. I don't know what the
4 evidence is, so --

5 MS. ROSS: So, your Honor, we did obtain
6 further information about this January 25th, 2012,
7 incident. We obtained it from the United States Marshal
8 Service. I provided it to Mr. Bendzunas. He suggested
9 that I submit it to the Court.

10 Prior to being able to submit it to the Court, I
11 had to make sure that the Marshal Service was okay with
12 me submitting it to opposing counsel, and Chief Hall
13 told me today that that was permissible, and I have
14 turned it over to defense counsel, Mr. Straub.

15 So the January 25th, 2012, incident, which is
16 entitled on the bail report "Fugitive from Justice," it
17 involved the U.S. Marshal Service asking the Colchester
18 Police Department for assistance in arresting Mr. Folks
19 on a warrant out of New York by the New York parole
20 department, and during that arrest, which was conducted
21 by Deputy U.S. Marshals Max Galusha, John Curtis and
22 Mike Barron, among others, they found Mr. Folks hiding
23 under a couch at the location where they arrested him.

24 Again, I got permission to submit the report itself
25 both to the Court, of course, but also to opposing

1 counsel, and I am happy to share the report with the
2 Court if the Court wants something beyond what I have
3 just explained.

4 THE COURT: So is there an offer for
5 admission?

6 MS. ROSS: Yes, there is, your Honor.

7 THE COURT: Okay. Mr. Straub, the government
8 says your client was found hiding under a couch.

9 MR. STRAUB: Yes, Judge. You know, for the
10 formality of it, I must object.

11 THE COURT: Okay.

12 MR. STRAUB: The evidence is disclosed. If
13 the Court is going to accept that evidence, then I would
14 certainly make a proffer of testimony from the
15 individual in whose home he was found on that occasion
16 and what his purpose of being there was.

17 THE COURT: Okay. All right. So I -- I'll
18 permit the government to make the proffer that he was
19 found hiding under a couch at a residence in Colchester
20 in 2012. Mr. Straub, I will permit you to provide any
21 other explanatory evidence or proffer with regard to
22 that.

23 MR. STRAUB: Thank you.

24 MS. ROSS: Thank you, your Honor.

25 I will note as well that -- and this information

1 Mr. Straub has had -- that at 17:14 on the post-arrest
2 statement, Deputy U.S. Marshal Max Galusha says to
3 Mr. Folks, "The last time I saw you, you were hiding
4 under a couch," and Mr. Folks acknowledged that. So
5 that was also in the post-arrest statement.

6 From there we have the marshal's report indicating
7 that the next arrest for the -- for a parole violation,
8 Mr. Folk -- Mr. Folks was arrested in Wilkes-Barre,
9 Pennsylvania. That's where he was arrested on September
10 6th, 2013. There was a -- his parole was revoked.

11 Then on December 27th, 2013, the physical arrest is
12 noted as being in Wilkes-Barre, and he was arrested by
13 the New York/New Jersey fugitive task force.

14 MR. STRAUB: I'd object as well to that
15 information as I don't know where that's coming from.
16 It's not been in evidence thus far. I have not seen any
17 reference to that in any of the other materials, and my
18 client is sitting here going he doesn't know anything
19 about Wilkes-Barre. Wilkesboro.

20 THE COURT: Well, there was a probation
21 violation sustained on December of 2013, which seems to
22 me to be the relevant factor for the Court's
23 consideration, so.

24 MS. ROSS: Again, it is in the same report
25 that -- the marshal's report that I have provided, the

1 details about this arrest, and, again, we're trying to
2 make sure the Court has accurate information.

3 So he went back to jail and is -- in 2013, and is
4 released in 2014, and he picks up charges again in
5 September of 2014. He then picks up two more -- more
6 charges in July of 2015.

7 So we have a criminal history of somebody with
8 constant interaction with law enforcement and not
9 complying with court orders while on conditions of
10 release or parole, as the case may be.

11 Now, I can't --

12 THE COURT: Of course you are referring to
13 the -- two of the three charges were dismissed.
14 Correct?

15 MS. ROSS: Yes, but while he was on conditions
16 for those charges -- for the July 2015 charge, he
17 committed the instant crime.

18 THE COURT: I'm sorry, say that again?

19 MS. ROSS: So, just to be clear, July 2015,
20 one of the two charges was dismissed. One was
21 maintained. But the instant conduct took place during
22 the summer of 2015, when he picked up those instant
23 charges.

24 THE COURT: Is it not important to distinguish
25 the fact that -- particularly with regard to the

1 aggravated sexual assault charge, that was dismissed?
2 So when you say "picked up," he was accused of these
3 offenses but never convicted.

4 MS. ROSS: Yes. That's correct, your Honor.

5 THE COURT: Okay. So --

6 MS. ROSS: The 2014 charge he was not -- that
7 charge was dismissed.

8 THE COURT: So, okay.

9 MS. ROSS: Now, Mr. Folks -- this was in the
10 government's motion for detention originally, and
11 Mr. Folks -- it came from the post-arrest statement.
12 Mr. Folks described his role as -- the role that he has
13 been playing, as he described it, as "the violent one,"
14 to -- to the agents in the post-arrest statement.

15 At 17:09 on that post-arrest statement, he does
16 clarify that he has been playing that role, he has been
17 engaged in this conduct since January of 2014 when he
18 got released and moved back to Vermont. And the
19 government did make that point in its -- in its motion.

20 So, your Honor, I said that I wanted to come back,
21 if you will, to the three-year time period from 2009
22 until 2012, the fugitive situation, January of 2012. We
23 have done work to understand, with our New York
24 counterparts, as they indicated, that this defendant had
25 two arrests during that time, one in May 2009 and one in

1 July 2010, and that they were both related to arrests
2 for violent crimes.

3 Now, I was trying to determine whether -- why that
4 wasn't showing up on the criminal history that the
5 probation office was able to obtain from New York since
6 this was information that we were seeing from our New
7 York counterparts, and we have been able to determine
8 that the reason that they're not showing up on the
9 criminal history is that they are still under seal. I
10 can't provide any more information than that because I
11 don't know any more what being under -- what the
12 disposition was, but I do alert the Court to that. And
13 just for purposes of a full record, if it were important
14 to the Court that we unseal them, get that information,
15 we could do so. But I wanted to fill the Court in on
16 that status because that was a bit of a mystery to us as
17 to why things were showing up through our channels but
18 not for probation.

19 MR. STRAUB: Your Honor, I object. The
20 government's referring to some information that I have
21 no record of. If the government's got some record of
22 it, might they share it?

23 MS. ROSS: Your Honor, I have asked the New
24 York police department through our agents what are we
25 allowed to share. We are only allowed to share the

1 unsealed records, which we could get if that were an
2 important matter to this Court.

3 THE COURT: It's up to the government to
4 present the evidence it thinks is appropriate to meet
5 its burden here. It's not up to me to tell you what you
6 should be offering into evidence.

7 MS. ROSS: Okay. We are not in a position to
8 offer that today. We have just sorted out and gotten to
9 the bottom of why are -- are we getting information that
10 is not showing up for the probation office.

11 THE COURT: So, Mr. Straub, I have no
12 information or evidence before me concerning what Miss
13 Ross is referring to, so to the extent you are making a
14 argument as to the weight to be accorded to it, I have
15 nothing before me. So I --

16 MR. STRAUB: Understood, Judge.

17 THE COURT: Yes.

18 MR. STRAUB: And I certainly don't want to
19 delay this proceeding any further chasing that
20 information. Thank you.

21 THE COURT: Okay.

22 MS. ROSS: Your Honor, so in addition to the
23 lengthy period of time that this individual has spent in
24 jail and his failures to comply with court orders when
25 he is not in jail, when he is released on parole, we

1 have also shown that he doesn't have a stable or
2 consistent living situation. In fact, at the time of
3 his arrest, his wife had no idea where he was living.

4 Of course that -- so we think that that information
5 alone that's covered by the bail report should be enough
6 to hold this defendant, but of course the government has
7 spent a lot of time showing that there is far more and
8 that this defendant has a history of violence and one
9 that -- one that continues to date.

10 By his own admission, he is an enforcer. He has
11 described himself as "the violent one." He has stated
12 that he robs and beats people. He has stated that --
13 when asked, could -- if he was "the muscle" for drug --
14 for drug dealers, he said, "Pretty much."

15 Now, in addition to that, we have put on evidence
16 that he was found -- despite being found a convicted
17 felon, BPD found him in a vehicle with a nine millimeter
18 Beretta, and he was the lone occupant of that vehicle.

19 The government has introduced evidence that he
20 threatened Mary Provost with a loaded gun and threatened
21 to kill her and put her -- put his hands on her neck, or
22 threatened to snap her neck.

23 In addition, the government put on the Facebook
24 evidence showing what I would characterize as -- as
25 threatening behavior to an individual he thought had

1 stolen things from him.

2 We also have the source of information who
3 described him as having firearms. The firearms has come
4 up in a number of different contexts in the evidence we
5 put on.

6 Your Honor, I did check, because you asked a
7 question yesterday about -- of the agent, of the nature
8 of the sources, the false information to law enforcement
9 charge, if he knew about that. He did not, but we
10 followed up, and I have -- we did determine that the
11 source gave a fake name to law enforcement when she
12 was -- when they interacted with her on the heroin
13 possession and -- charge of that date.

14 Lastly, I would say that with the level of danger
15 that has been introduced to the -- in terms of the
16 evidence that has been put forward, that is also a
17 grounds to hold this defendant. We would say that he is
18 unwilling to comply with conditions, and that makes him
19 a risk of flight. He told this Court that he was in
20 the -- though the government's motion described him as
21 "the muscle," he said he didn't say that; in fact, he
22 did. He did agree to that.

23 So for all of those reasons, the government
24 believes that this defendant should be detained.

25 THE COURT: Okay.

1 MS. ROSS: Oh, your Honor, I'm sorry. If I
2 may? I think the last issue that was in the bail report
3 was the -- was the medical issue.

4 Of course this defendant was fully ambulatory at
5 the time he was arrested on July 19th, not walking with
6 a cane, not in a wheelchair. That's not to say -- I
7 don't think that the defense is contesting that, so the
8 medical issue is -- if it exists, should be -- easily be
9 able to be accommodated by the Marshal Service since,
10 you know, just a little over a -- a week ago he was
11 fully ambulatory.

12 Thank you, your Honor.

13 MR. STRAUB: Thank you, Judge.

14 Your Honor, we'd ask the Court to release Mr. Folks
15 in large part on the strength of the probation report
16 which does find that there are conditions of release
17 that can ensure his appearance and public safety.

18 The -- the government's provided quite a bit of
19 information, I think, in their summation here that
20 should have been presented to the probation office at
21 the time of the preparation of the report or presented
22 in evidence. We have had several days of opportunities
23 to work -- to get the evidence together. So we'd ask
24 the Court to take that new information and give it no
25 weight.

1 THE COURT: Specifically, which information
2 are you referencing?

3 MR. STRAUB: Well, Judge, the information, in
4 particular, I think about Wilkes-Barre, I think that is
5 referencing to Pennsylvania. I'm looking at the Marshal
6 Service report that says that the subject was arrested
7 by New York/New Jersey fugitive task force at
8 Wilkes-Barre. It doesn't say he was arrested at
9 Wilkes-Barre. It says he was arrested by some agency at
10 Wilkes-Barre. I don't know what that means. I don't
11 know why a New York/New Jersey task force would be in
12 Pennsylvania or really how that all adds up, but I don't
13 believe that we have information that he has been out
14 wandering around Pennsylvania.

15 We proffered early in the proceeding that his
16 fugitive charge in 2012 and other parole violations
17 related to his trips to Vermont to visit with his
18 children, and we do have, should we need to present
19 testimony, the mother of Mr. Folks' child, Danielle
20 Dagenhart, who is present and was present at the time of
21 that arrest, and would testify that he was, in fact,
22 there to visit his kids.

23 Now, may have been --

24 MS. ROSS: Your Honor, I will interpose an
25 objection to that. We won't accept the proffer,

1 although we would allow Mr. Straub to put forth that
2 evidence if he wished.

3 THE COURT: I will receive Mr. Straub's
4 proffer. I think it's a satisfactory basis. The Court
5 can take a proffer of information, and there's no reason
6 not to believe that one of the reasons Mr. Folks was in
7 Vermont was to visit his children.

8 MR. STRAUB: And so I would note that that
9 fugitive-of-justice charge was resolved promptly. At
10 his first appearance, Mr. Folks waived extradition back
11 to New York and was processed promptly back to New York
12 in 2012.

13 Now, the government presented quite a bit of
14 evidence which, I think, failed to connect the dots that
15 it was seeking to connect. The government provided
16 testimony regarding an individual who provided
17 information. This source of information's testimony --
18 information provided to -- during some sort of
19 discussion with the U.S. Attorney's Office and law
20 enforcement indicated that Mr. Folks was engaged in drug
21 distribution and otherwise controlling several women.

22 That source of information is unidentified and is
23 known to have been charged with a false-information
24 charge. Now, the government offers today some
25 additional information that has not been shared with me

1 that indicates that that charge related to giving a
2 false name. My understanding of the charge, the way
3 it's written in the criminal record, is that it was
4 charged under a section of the statute related to
5 reporting a crime that didn't occur.

6 Be that as it may, false information to a police
7 officer should bear on the credibility of that source of
8 information, particularly at this remote -- this -- the
9 remote -- the several layers of hearsay through which
10 her information has been presented to the Court.

11 She -- the best the government could say in citing
12 to that individual is that individual believed that
13 various guns that she saw were somehow belonging to
14 Mr. Folks, without any indication of information as to
15 what formed the basis of that belief. So that
16 information should be discounted.

17 More pointedly, that individual told the government
18 that she was present at a straw purchase set up by
19 Mr. Folks. However, the government doesn't present any
20 information showing that any such purchase occurred at
21 any time up at the known gun shop in Milton. There is a
22 reference in the report to the location where the
23 purchase was made. It would seem that the government
24 could have readily presented this information.

25 So the source of information lacks credibility,

1 firsthand knowledge of some of the information provided,
2 and should be discounted.

3 The government also presented some testimony from
4 an analyst with the DEA, I believe is her agency, in
5 which the analyst was also providing information second-
6 and thirdhand. But I think the Court allowed the
7 admission of some of the evidence, so I --

8 I would note that the recording of a statement by a
9 Mary Provost referenced an individual name Moe. We
10 stipulated that my client is known as Moe. However, I
11 don't believe there was any testimony from the
12 government that tied that person named Moe, that was
13 being discussed by Mary Provost, to my client. I can't
14 begin to guess the number of individuals in the state of
15 Vermont named Moe. So I don't believe that the
16 government sufficiently established that that individual
17 was stating that she was in any way assaulted by my
18 client.

19 We also don't have any information about that
20 individual, under what circumstances she provided that
21 information, whether it was in some way related to any
22 inducements to provide information or any threats of
23 prosecution in any way or a -- or her background, her
24 criminal history and whether or not she's known to
25 provide reliable information on past occasions.

1 So I'd ask the Court to dis- -- discount that
2 statement by Mary Provost as it was played into the
3 court.

4 The government today doesn't really cite to the
5 video that we saw of a Facebook post presumably by
6 Mr. Folks. He was identified by the agent analyst as
7 being Mr. Folks. I think the video itself makes
8 clear -- well, it looks like a joke, and we don't have
9 any information that would support that anything that
10 was said in that really had anything to do with anything
11 in reality, and, in fact, it seems that the worst thing
12 that was said on that video is that the MC in the video
13 may have required that individual to walk around in an
14 apron.

15 The analyst testified that the individual was nude
16 under the apron, but given the style of women's
17 undergarments these days, I don't know that I could see
18 if that individual was naked on that video, so -- I
19 don't know whether the Court could, but it does not
20 appear that that should be considered relevant to this
21 proceeding in any way.

22 The Court heard testimony on perhaps two sides of
23 the issue as to whether Mr. Folks has a stable home to
24 return to. Obviously the testimony from all sides is
25 that there -- it's a marriage working through

1 difficulties, but the clear testimony from Mrs. Folks
2 was that they're working on their issues, and again, I
3 proffer that. I don't think she testified directly on
4 this point, but I think her presence speaks amply that
5 he is welcome to return to stay at the home during the
6 course of these proceedings. So he does have a stable
7 residence in Vermont.

8 He has many children -- six children, and he's
9 engaged with them. I know the Court's not looking for
10 perfect parenting but simply ties to the community, and
11 so he does have those ties to the community, a 10-year
12 history of residence in the community. In fact, his New
13 York parole was transferred up here, as I could tell
14 from the record. If I -- let me just double check on
15 that.

16 (Defense counsel and defendant confer
17 briefly.)

18 MR. STRAUB: All right. Well, so he was
19 getting passes from New York to come on up during the
20 tail end of his parole, and then parole finally
21 concluded down there. So at the end of his parole
22 period, New York State was trusting him to come up here
23 and stay in touch with them and that he successfully
24 concluded his parole for a charge, which I should note,
25 again, he picked up at the age of 17 in New York City.

1 I think that the knowledge base of the judiciary
2 regarding the development of juvenile brains is such
3 that the Court doesn't need an expert to come on in and
4 testify that something that someone did at 17, while a
5 very serious crime, of course, manslaughter, you know,
6 is -- should be considered in light of the age of the
7 individual and, furthermore, the passage of time.

8 Mr. Folks is now 40. He has not been convicted of
9 any further serious crimes, and although he has been
10 charged, I'm sure the Court is not looking at
11 unconvicted conduct in terms of assessing my client and
12 his risk of harm to the community or risk of flight.

13 A single failure to appear does show up. I believe
14 Mr. Bendzunas noted that it probably had something to do
15 with the fine, and, in fact, I would note that, from
16 what I can tell, the date of the failure to appear, of
17 September 26th, 2006, comes after the date of sentencing
18 and disposition on page three of the report, and so that
19 does support the notion that it had something to do with
20 failure to appear to pay a fine as the state court was
21 want to do back in 2006, having been practicing there
22 myself. Set show cause hearings after a fine has been
23 imposed to check in with the defendant, see if they can
24 pay the fine, make the payment plan with them, and keep
25 an eye on the process of the payment of that fine. So,

1 you know, he did not fail to appear for -- in a pending
2 criminal case.

3 Turning to Mr. Folks' health. We certainly
4 acknowledge that he is able to walk when he is able to
5 take proper care of himself. While he has been
6 incarcerated, he has been having difficulty with the
7 diets that have been made available to him. He has --
8 he shouldn't eat meat. It doesn't -- his body doesn't
9 accept it well. He primarily -- he subsists on a
10 vegetarian diet when he can choose his foods. And
11 furthermore, it's the level of activity that he needs to
12 do to maintain his muscle tone after having been shot in
13 the back.

14 He is prone to experience -- his leg is trying to
15 atrophy given the damage done to his nervous system, and
16 so he needs to maintain that through therapy,
17 stretching, exercises, moving around. Constantly
18 sitting in chairs or being confined causes difficulty
19 and reduces his mobility.

20 So whether he would be detained in a facility that
21 would provide him with adequate opportunities to
22 maintain his physical condition, you know, it's
23 possible, and certainly if he is held and starts
24 suffering further deterioration, we would bring that to
25 the attention of the Court, but I believe that, you

1 know, it's something that should be considered at this
2 time, that he does have a serious physical condition
3 that requires daily attention on his part and self-care,
4 which is obviously better -- easier to take care of
5 yourself when you are able to take care of yourself as
6 opposed to being locked up where you are on someone
7 else's schedule.

8 So, your Honor, we'd ask the Court to consider, as
9 suggested by the presentence report, that there are
10 conditions of release which could assure Mr. Folks'
11 appearance in the community; that this Court addresses
12 defendants with these charges of conspiracy and
13 distribution far too routinely, regularly hears these
14 cases, and I don't want to stay routinely, but often
15 does release individuals with these very charges and
16 probably worse criminal records into the community, and
17 so that it would be consistent with that; as well I
18 would note to the Court, I think as the Court questioned
19 earlier in this proceeding, that Mr. Folks was taken
20 into custody without incident in this matter, was not
21 found to be in possession of any firearms, which reminds
22 me to go back to speak about the firearm that was
23 allegedly testified -- well, it was testified that it
24 was found in the glove box.

25 The presumption being presented by the agent

1 testifying is from fact that it appeared on that
2 incident report the BEKLÄ box had to do with the car
3 that Mr. Folks was driving in. Accepting that for a
4 second, the car was owned, titled in another
5 individual's name, registered in that individual's name;
6 and she, in fact, told officers that she would not give
7 consent for the search and thereby did exercise control
8 over the vehicle, demonstrated that she controlled the
9 vehicle.

10 The testimony and, I think, as -- yes, as admitted
11 into evidence in the incident report, one of the
12 narratives there notes that that individual stated that
13 Mr. Folks was regularly known to use the car. There's
14 nothing that says he exclusively controlled the car and
15 that it can't be stated clearly that that weapon found
16 in the car -- that was found in the car was there, that
17 it was his or that he even knew about it.

18 I should note that also in that incident report
19 there's reference to Mr. Folks asking that he be allowed
20 to remove several bags of toys that were in the back of
21 the vehicle. I mention that, your Honor, because I
22 think it's consistent with what was put into evidence
23 regarding his statement to the police.

24 There was some joking about him being Robin Hood,
25 but in seriousness, he had told the police that the

1 money that he robbed from drug dealers coming up or
2 individuals coming up from New York he gave to the
3 community in the form of various assistances and toys so
4 the kids would have something at Christmas. I note this
5 was -- that event was about Christmastime.

6 Now, the government is looking to take a statement
7 at the beginning of this narrative interview and -- and
8 say that's the end of it, that he was the muscle, that
9 he was the violent one, but I think if you look at the
10 entire record, he's not saying that he was doing
11 anything in aid of the conspiracy but, rather, that he
12 was discouraging other individuals.

13 I know that that can be spun to say he was trying
14 to protect turf, but I think that what he was -- what he
15 said in the record was that he was discouraging other
16 individuals. He has -- from coming on up and was
17 thereafter doing something useful with the community.

18 I don't think either of my client or myself are
19 saying that those sorts of behaviors are a good idea.
20 They obviously create, you know, a situation that could
21 get out of hand, but I don't believe that it could be
22 taken that those behaviors were made in aid of his -- of
23 the alleged conspiracy. The --

24 So we'd ask the Court to consider that Mr. Folks
25 has not been convicted of any serious charges beyond

1 misdemeanor marijuana possession and a disorderly
2 conduct charge since the conviction at the age of 17.

3 Not being familiar with the laws of manslaughter in
4 New York State, I would note that the charge was
5 reduced -- well, I think it was originally charged as
6 homicide but eventually convicted as manslaughter. I
7 think that that would bear some -- and I can assume that
8 it had something to do with the state of mind and
9 intentions of the act; and so, again, referring to the
10 fact that he was 17, Mr. Folks has not been convicted
11 since then of anything serious.

12 These charges are serious, but he can safely be
13 released into the community. He has a good record of
14 appearance at court proceedings, and whenever he did
15 violate his parole, he was found visiting his children
16 in Vermont, it seems. So we'd ask the Court to consider
17 those facts and order him released on the conditions
18 proposed by the pretrial services.

19 THE COURT: Okay. With regard to your
20 argument concerning the post-arrest statement, is there
21 a particular statement you wish to call my attention to,
22 or --

23 MR. STRAUB: Well, Judge, we heard several
24 minutes, and the -- in the middle of that portion of the
25 statement that was played, Mr. Folks said he was

1 discouraging individuals. That's where I think the
2 conversation turned into "I was discouraging individuals
3 from being here." And then the police brought up the
4 word "rob," and my client didn't object to that -- that
5 word.

6 THE COURT: I think he said blind. When the
7 police suggested rob, he interjected the word "blind."

8 MR. STRAUB: Blind?

9 THE COURT: It was --

10 MR. STRAUB: Rob blind, okay.

11 THE COURT: Yeah.

12 MR. STRAUB: So -- well, I think we can assume
13 that means the common parlance there. So, yes, he
14 acknowledged that he was taking money from individuals,
15 but he also said it was to discourage them from being in
16 the community.

17 I think that he has personal experience of the drug
18 problem in the community impacting his family, and I
19 would note that the charges that he has been presented
20 with here today haven't been proved. We would hope to
21 work through that going forward but that it -- I think
22 the statement as made at the time of his arrest was to
23 the effect that he was discouraging individuals from
24 being in the community and taking their -- their
25 possessions.

1 THE COURT: Okay. Thank you.

2 In connection with this matter, we have heard a
3 great deal of evidence, so I think it's important that
4 the Court makes some factual findings with regard to the
5 government's motion.

6 First and foremost, the Court has before it the
7 report of the pretrial services officer, and the
8 information that's set forth in that report is adopted
9 as the Court's factual findings. I understand that
10 counsel for both parties have advanced some clarity with
11 regard to the assertions set forth within the report,
12 but the pretrial service officer's report is thorough
13 and provides some fundamental facts upon which the Court
14 can base its findings.

15 In addition, the government has presented evidence,
16 as has Mr. Folks. That evidence came in the form of
17 testimony from Special Agent Destito, DEA Intel Analyst
18 Epp, and then we heard from the spouse of the defendant.

19 With regard to the testimony of Agent Destito,
20 Agent Destito's testimony establishes that on December
21 25th, 2016, the Burlington Police stopped a motor
22 vehicle driven by Mr. Folks. That motor vehicle was
23 registered in the name of another, one Lori Crawford.

24 As a consequence of some events that unfolded
25 there, the Burlington Police Department secured a search

1 warrant and recovered a nine millimeter pistol in the
2 glove box of the vehicle, together with some ammunition.

3 Miss Crawford has denied owning the firearm. She
4 has also indicated to law enforcement that although the
5 vehicle was registered in her name, it was a vehicle
6 used by Mr. Folks. So there's some construct- -- there
7 is some evidence that Mr. Folks was in constructive
8 possession of that firearm on Christmas Day of 2015.

9 Agent Destito described some information from an
10 anonymous source of information, and quite frankly, I
11 found the testimony with regard to the source of
12 information not to be persuasive. The source of
13 information, again, is anonymous. We know nothing about
14 him or her other than the fact that he or she -- I
15 believe the feminine pronoun was used -- she is a user,
16 an active user of opiates, and has been for some time,
17 has a criminal record to include making false
18 information to a police officer. The source of
19 information has had numerous interactions with the
20 criminal justice system.

21 In light of the fact that this individual remains
22 anonymous, remains an active opiate user, I just don't
23 find the information that was presented with regard to
24 the source of information to be persuasive, and I do not
25 take that into account in my findings.

1 Similarly, with regard to some vague information
2 about New York arrests, I have nothing before me upon
3 which to base any factual findings. I agree with
4 Mr. Straub that the evidence or the information is vague
5 at best, and again I find that not to be persuasive and
6 plays no role in my decision.

7 With regard to the testimony of DEA Intel Analyst
8 Epp, Miss Epp testified primarily as a witness to
9 authenticate certain recordings. She authenticated an
10 audio and video recording of Mr. Folks's post-arrest
11 interview. And it's clear in the course of that
12 recording that Mr. Folks made some very damaging
13 statements. It is clear in that recording that he made
14 the statement that he was "the violent one."

15 When it was suggested by the DEA -- interviewing
16 DEA agents that Mr. Folks had been robbing people, it
17 was my recollection that Mr. Folks responded he had been
18 robbing people blind. It is argued that he has been
19 robbing these individuals, whoever they may be, in order
20 to keep the community safe. I can't draw that same
21 conclusion. It seems to me that in that post-arrest
22 interview Mr. Folks has admitted to using violence or
23 threats of violence to advance his own private concerns.

24 In addition, Intel Analyst Epp authenticated a
25 recording of one Mary Provost. Miss Provost described

1 an assault with a gun by an individual she identified as
2 Moe, a name that Mr. Folks himself uses later on in the
3 Facebook page recording. She described a vicious
4 physical assault committed by Moe. It is argued that
5 there is no evidence that Mr. Folks is the Moe referred
6 to by Mary Provost, so Mr. Straub is correct in
7 advancing that argument. So I give that testimony
8 limited weight.

9 Finally, there is the Facebook page recording in
10 which Mr. Folks made derogatory statements about a
11 particular woman. I didn't find those statements to be
12 particularly relevant to questions facing the Court with
13 regard to release or detention. I think the value of
14 the Facebook page is that Mr. Folks's physical
15 impairments are perhaps not as severe as he has
16 projected them. He appeared to me to be moving with
17 relative ease and comfort in that Facebook page
18 recording.

19 Finally, we have the testimony of Mr. Folks's
20 spouse. Significantly in her testimony, she indicated
21 that Mr. Folks had only resided approximately 30 nights
22 since March of 2016 at the residence. She had no
23 indication or did not know where he had been on those
24 other nights. Mr. Folks disclosed no other address to
25 the interviewing pretrial service officer other than the

1 241 West Canal Street address. So there is ample
2 concern about where Mr. Folks has been living during
3 this period of time.

4 The government has moved for the detention of
5 Mr. Folks making the assertion he presents a risk of
6 flight or, alternatively, a danger to the community.
7 The government bears the burden to show that an
8 individual is a risk of flight by the standard of a
9 preponderance of the evidence, and it bears the burden
10 to show Mr. Folks is a danger to the community by clear
11 and convincing evidence.

12 And really, the government's burden with regard to
13 this is twofold: It must show by clear and convincing
14 evidence that Mr. Folks is a danger to the community and
15 also by the same standard that there are no conditions
16 or combination of conditions the Court could employ to
17 protect the community.

18 At this stage of the proceedings, the defendant is
19 of course presumed to be innocent of the offenses that
20 are alleged in the indictment; however, a -- by virtue
21 of the grand jury's finding of probable cause, a
22 presumption arises that there's no conditions the Court
23 could set to address the twin concerns of risk of flight
24 or danger to the community. More precisely, though,
25 with regard to this presumption, a defendant bears a

1 limited burden of production to rebut that presumption.

2 The ultimate burden of persuasion remains with the
3 government throughout these proceedings. In the event
4 that presumption is rebutted, it doesn't disappear; it
5 remains one of the factors for the Court to consider.

6 The Court does not make these decisions in a
7 vacuum. It's guided by the statutory factors set forth
8 in 18 USC, section 3142(g). Those factors include the
9 following: In general terms, the nature of the offense
10 charged, the strength of the evidence, the history and
11 characteristics of the individual whose release or
12 detention is under consideration, and, finally, the
13 specific danger that would be posed by the individual's
14 release to the community as a whole or any particular
15 person in the community.

16 Looking at these factors both individually and
17 collectively, with regard to the nature of the offense
18 charged, the indictment in this case charges Mr. Folks
19 with engaging in a very serious conspiracy lasting
20 approximately 10 months here in Vermont and elsewhere
21 and that the object of the conspiracy was the
22 distribution of 28 grams or more of cocaine and 100
23 grams or more of heroin, narcotic substances. This
24 indictment is a very serious one.

25 And moreover, the offense behavior alleged by the

1 grand jury also involves the constructive possession of
2 a firearm. The evidence also shows that Mr. Folks has
3 employed in order to achieve the goals of the charged
4 conspiracy violence or threats of violence. So that
5 first factor is a very serious one and weighs in favor
6 of detention.

7 With regard to the second statutory factor, the
8 strength of the evidence, the grand jury found probable
9 cause exists to believe Mr. Folks has committed these
10 offenses, but perhaps more significantly, with regard to
11 the analysis of this factor, Mr. Folks has made
12 post-arrest statements which would suggest that he has
13 engaged in the behavior described in the indictment.

14 With regard to Mr. Folks's history and
15 characteristics, there are several sub-factors the Court
16 must consider with regard to this factor. Those include
17 such factors as community ties, employment history,
18 family ties, history related to drug or alcohol abuse,
19 criminal history, history while under court supervision,
20 and several other sub-factors.

21 In looking at the bail report, Mr. Folks has not
22 been convicted of any serious offenses in the last 20 --
23 20-plus years. He was convicted at age 17. He is now
24 41. He was convicted at age 17 of the serious crime of
25 manslaughter. For that offense he received a very

1 serious penalty of 90 months to 21 years of
2 incarceration. In 2006 he was released on parole.

3 Given the age of this offense, the Court would not
4 place great weight on this offense; however, of great
5 concern to me is the fact that Mr. Folks violated parole
6 on two occasions. It is advanced that Mr. Folks
7 violated his paroles for the purpose of visiting his
8 children, but I note that New York parole authorities,
9 in revoking his parole, resentenced him to a period of
10 incarceration. Clearly his violations were of a serious
11 nature, in view of parole authorities' actions in this
12 case.

13 He does have family ties. Everything before me
14 indicates that Mr. Folks is a very dedicated and
15 committed parent to his children and his stepchildren --
16 his child and his stepchildren, but clearly it is
17 disturbing to me that Mr. Folks -- his whereabouts have
18 been unknown for several months.

19 His wife testified that he has been around
20 approximately 30 nights since March of 2016. No one
21 knows where he has been, suggesting that the family ties
22 are not that strong as projected -- as initially
23 projected.

24 He has no history of drug or alcohol abuse. With
25 regard to employment, he is collecting SSDI as a result

1 of his injuries.

2 I am also concerned over the fact that Mr. Folks
3 failed to disclose whatever other addresses he may have
4 been utilizing during this period of time.

5 And, finally, with regard to danger to be posed to
6 the community by the release of Mr. Folks, credible
7 evidence exists to believe that he has engaged in
8 violence or threats of violence to achieve the object of
9 the conspiracy.

10 And, finally -- well, given the nature of the
11 offense charged, given the presence of a firearm, given
12 his admissions about his role in the offense, given the
13 fact that a presumption applies here, and the lack of
14 clarity as to where he has been living, I find that the
15 defendant has failed to rebut the presumption and that
16 the government has met its burden to show by clear and
17 convincing evidence that Mr. Folks is a danger to the
18 community and no conditions can be set to address that
19 danger, and the government has met its burden to show by
20 a preponderance of the evidence that Mr. Folks is a risk
21 of flight.

22 I will state for the record that I have given
23 consideration to the possibility of electronic
24 monitoring as a way to monitor Mr. Folks's behavior, but
25 that would be insufficient to address the danger to the

1 community that has been posed by Mr. Folks's behavior.

2 Accordingly, the motion is granted. Mr. Folks is
3 ordered remanded to the custody of the United States
4 Marshal pending further proceedings in this matter.

5 The Court will stand in recess.

6 (Court was in recess at 3:03 p.m.)

7 *** ** ***

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9
10 C E R T I F I C A T I O N

11 I certify that the foregoing is a correct
12 transcript from the audio record of proceedings in the
above-entitled matter.

13 

14 May 5, 2017
15 Date

Anne Nichols Pierce